



Oregon

John A. Kitzhaber, MD, Governor

Department of Land Conservation and Development

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February 8, 2013

Derrick I. Tokos
Community Development Director
City of Newport
169 SW Coast Hwy
Newport, OR 97365



Delivered via email: d.tokos@newportoregon.gov

**RE: Urban Growth Boundary (UGB) amendment application for City water treatment plant and water storage reservoirs (2-UGB-12)
DLCD File No. 001-13**

Dear Derrick:

We appreciate having the opportunity to work with you on this proposal. The City of Newport is a highly valued partner in Oregon's Coastal Management Program and an economic engine for the region. Local governments offer few services more important to their constituents than the delivery of clean reliable drinking water and we laud the City for its efforts to maximize efficiencies in this area of critical concern. Your willingness to meet with and maintain an open dialogue with the Department on this application speaks to the strong relationship held between the City of Newport and DLCD and we look forward to continued collaboration on many future community and economic development endeavors.

The City's proposal to add 381 acres to its UGB would encompass the City's existing water reservoirs and treatment facilities plus an area for future expansion of the reservoirs. The proposal also includes room for a buffer along the shoreline of the expanded reservoirs to accommodate a regional park facility. While most of the land proposed for the UGB expansion is owned by the City of Newport, approximately 70 acres of the land to be added is privately owned forest land.

The City must justify expansion of its UGB under the provisions of Statewide Planning Goal 14, governing urban growth boundaries. Goal 14 requires, first, that the City justify the need for the amount of land in the expansion area, and, second, the specific location of the expansion area. The two need factors are:

- (1) Demonstrated need to accommodate the long range urban population, consistent with a 20-year population forecast coordinated with the affected governments; and
- (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of these need categories.

The primary question facing the City of Newport with this proposal is whether there is a "need" to place water supply-related public facilities needed to provide adequate amounts and quality of domestic water service to current and future City residents within the City's UGB.

Because of their location relative to water sources and the nature of water distribution systems, water service facilities for cities in Oregon are often not located within that city's urban growth boundary. Most notably, water intake facilities and large reservoirs are often located at a source of water that is of suitable quality for municipal use, generally in watersheds that are designated rural forest lands. For that reason, the state's rules for allowed uses in forest lands, found in Oregon Administrative Rule 660-006-0025, make specific provisions for water intake facilities, related treatment facilities, pumping stations, and distribution lines, and also reservoirs and water impoundments. These are all allowed conditionally in a forest zone, based upon three necessary findings:

- (a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
- (b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and
- (c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules.

In Oregon's coastal and Willamette Valley region several other cities have larger impoundments for water reservoirs similar to Newport's existing and proposed reservoir.

1. Astoria's reservoir is located several miles southeast of the city, and is located on rural forest land.
2. The Coos Bay/North Bend water reservoir is located southeast of Coos Bay, and is contained within the Coos Bay urban growth boundary.
3. McMinnville Water & Light, a utility providing water service to McMinnville and smaller Yamhill County cities, has two reservoirs located in the coast range to the west of the city, not within any urban growth boundary.
4. Silverton's water reservoir is located outside of the city's urban growth boundary, less than one mile to the east.

The Department has two specific concerns with the proposal from Newport to add 381 acres to the City's urban growth boundary:

1. The City must clearly demonstrate the need to bring this land into the UGB. While the draft findings make clear the need for the City to have a safe and sufficient domestic water supply, the City must also provide clear justification for the need to have its water facilities within the urban growth boundary, especially given the accommodation allowed by the Oregon Administrative Rules governing uses on forest land for various facilities providing city water service. The three conditions for approval of such water facilities cited above do not seem to present an insurmountable impediment to a planned expansion of the City's water facilities onto rural forest land, as demonstrated by the number of such facilities on rural forest land in other parts of Oregon.
2. The proposed UGB expansion includes 70 privately-owned acres of forest land. The proposal appears to have the intent of designating and planning these private holdings for watershed protection, which is appropriate. However, eliminating the current owners' ability to use these properties for forest practices through restrictive city zoning may open the City to claims under ORS 195.300 to 195.336, more commonly known as the Measure 49 statutes. ORS 195.305(1) specifically allows a property owner to apply for compensation based upon a local government regulation that restricts forest practices. If the property owner can prove a reduction in property value based upon the regulation, the local government must either compensate the owner for the reduction in property value or waive the regulation. We would recommend that the City not include any privately owned lands in the proposed expansion until the City acquires ownership of these properties, which we understand is the City's eventual intention.

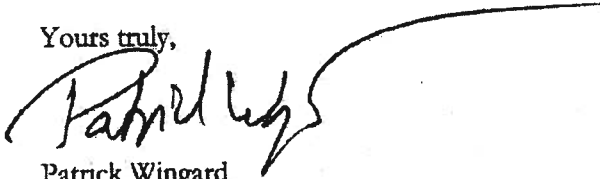
We also suggest that the City consider two alternatives to the proposed UGB expansion:

1. The City should consider annexing the properties but leaving them outside of the urban growth boundary. This would require the City to adopt a new rural forest zoning district to encompass the area, but would give the city regulatory authority to approve necessary conditional use permits in the future for needed water facilities. There is no statute or rule that prevents a city from annexing rural lands and keeping them designated for rural uses.
2. The City should also consider processing necessary conditional use permits through Lincoln County, which would be required if the city took no action to either add these lands to the urban growth boundary or annex them to the City. Other Oregon cities process such conditional use permits through a county as necessary for their municipal water facilities that are located outside of a city on rural forest resource lands.

We request that this letter be entered into the record of the proceedings. If you have questions or need clarification on anything contained in this letter, please do not hesitate to contact me at (503) 812-5448 or via email at patrick.wingard@state.or.us. I plan to attend the upcoming Planning Commission and City Council public hearings and would be happy to meet with you beforehand to

discuss these issues further. Thank you very much for your time and consideration and for the opportunity to comment on this proposal.

Yours truly,

A handwritten signature in black ink, appearing to read "Patrick Wingard", with a long, sweeping horizontal line extending to the right.

Patrick Wingard
North Coast Regional Representative

Copy. Gordon Howard, DLCD Urban Planning Specialist
Onno Husing, Lincoln County Community Development Director